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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,764	01/14/2004	Per Egelov	030481-0213	1513

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FOLEY AND LARDNER LLP
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EXAMINER

TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3773

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/756,764	Applicant(s) EGNELOV ET AL.	
	Examiner MELANIE TYSON	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-16 and 19-32 is/are rejected.
- 7) ☒ Claim(s) 6-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the applicant's amendment received 24 May 2010. The amendments made to the claims do not place the application in condition for allowance for the reasons set forth below. Claims 17 and 18 remain withdrawn from consideration.

Response to Arguments

Applicant's arguments with respect to claims 1-5, 10-16, and 19-32 have been considered but are moot in view of the new ground(s) of rejection necessitated by the applicant's amendment received 24 May 2010.

Claim Objections

Claim 2 is objected to because of the following informalities: a typographical error. In line 16, replace "reset" with --set-- (as required by independent claim 1). Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 12-16, and 19-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Kensey et al. (U.S. Patent No. 5,545,178). Kensey discloses a closure device (see entire document) comprising an inner member (inner seal 38), an outer member (locking member 36), a filament (42) attaching the inner and outer members,

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an insertion tool having a housing (88), a sleeve (64) telescopically received within the housing, a slider (40), and an actuator (pusher 74 having actuator mechanism 76, and tamping member 84) operable in a first mode for deployment of the inner member (for example, see Figure 12) and in a second mode for tamping an outer member (when distal end of member 84 exits 64 into the puncture tract), wherein the actuator is configured to be contacted and operated by a user in both the first and second modes, wherein the actuator is arranged to be set in the second mode in response to a pulling force acting on the filament (for example, see column 11, lines 6-12), wherein the pusher 75 is detachably connected to the inner member via the filament 42, wherein the actuator mechanism is adapted to disable the actuator until a pulling force acting on the filament sets the actuator into the second mode (its diameter is greater than the proximal opening of 70 thus further distal movement is disabled upon contact and the member 84 will not exit 64 until a pulling force acts on the filament), wherein the slider also exits 64 (second position) in response to a pulling force on the filament at which time the member 84 can also be released into the puncture tract, wherein the first and second modes are non-overlapping (see above for description of modes), and wherein the first and second modes can be performed by one hand.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kensey et al. in view of Kensey et al. (U.S. Publication No. 2001/0003158 A1).

Kensey '178 discloses the claimed invention except for the housing being formed of a tube having a forward portion with separate passageways, wherein the passageways converge in the tube. Kensey '158 discloses a closure device (see entire document). Kensey '158 teaches a housing (28', 28A) having separate passageways (502 and 504; for example, see Figure 32) that converge at 28A. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to incorporate separate passageways as taught by Kensey '158 in the housing of Kensey '178. Doing so would provide the advantage of separate lumens that would enable the user to effectively perform different tasks through the housing simultaneously. The separate passageways may be utilized as recited in the claims if one so desired.

Allowable Subject Matter

Claims 6-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose telephone number is (571) 272-9062 and e-mail address is Melanie.tyson@uspto.gov. The examiner can normally be reached on Monday through Thursday 8-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie Tyson/
Examiner, Art Unit 3773
July 22, 2010